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IN THE

Supreme Court of the United States

October Term, 1942

No. 622

THE GERITY-WHITAKER COMPANY AND GERITY-ADRIAN MANUFACTURING CORPORATION,
Petitioners and Respondents Below,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent and Petitioner Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

MILO J. WARNER,
1631 Nicholas Bldg.,
Toledo, Ohio,

HALL & DEVLIN,
528 Nicholas Bldg.,
Toledo, Ohio,
Counsel for Petitioners.

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To the Hon. Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

On December 28, 1939, Metal Polishers, Buffers, Platers & Helpers International Union (hereinafter called Union), affiliated with The American Federation of Labor, filed its Third Amended Charges with National Labor Relations Board. (Record, p. 20.) On December 29, 1939,

the Board issued its complaint against The Gerity-Whitaker Company and Gerity-Adrian Manufacturing Corporation (hereinafter called petitioners) charging petitioners with unfair labor practices affecting commerce within the meaning of Section 8, (1), (2), (3) and (5) and Section 2, (6) and (7) of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. Supp. V., Sec. 151 *et seq.* (hereinafter called "Act"). (Record, pp. 24 to 38, Board's Exhibit No. 1.) Thereafter, petitioners filed their separate answers (Gerity-Whitaker Company's answer, Record, p. 40—Ex. 8). (Answer of Gerity-Adrian, Ex. 9—Record, p. 48.) In each answer, these petitioners admitted certain allegations of the complaint, but each specifically denied every charge of violation of the Act. Proceedings were then had pursuant to Section 10 of the Act. The Board's decision, containing its findings of fact, conclusions of law and order was filed on July 14, 1941. (Record, pp. 114 to 157.) The separate applications of the petitioners to vacate, rescind and set aside or modify such findings of fact, conclusions of law and order were denied August 21, 1941. Prior thereto, on November 4, 1940, The Gerity-Whitaker Company had filed its application for leave to adduce additional evidence (Record, pp. 102-112), which application was denied on November 28, 1940 (Record, pp. 113-114).

In the final decision and order, the Board directed these petitioners to cease and desist from refusing to bargain collectively with the Union, to take affirmative action, including a direction to bargain collectively with said Union and to offer reinstatement to former positions and to compensate, with back pay, thirty-one persons named in its order.

Upon non-compliance by petitioners with said order of the Board of July 14, 1941, the Board on December 26, 1941, filed in the United States Circuit Court of Appeals for the Sixth Circuit its petition, setting forth certain proceed-

ings had before the Board "In the Matter of Gerity-Whitaker Company and Gerity-Adrian Manufacturing Corporation and Metal Polishers, Buffers, Platers and Helpers International Union, affiliated with The American Federation of Labor—and—Independent Finishers and Platers Union, party to the contract, and National Association of Die Casting Workers, Local No. 26, affiliated with the Congress of Industrial Organizations, party to the contract, as Case No. C-1683," setting forth certain findings of fact, conclusions of law, and a certain order made by said Board in said proceedings on July 14, 1941, and praying for an order of said United States Circuit Court of Appeals for the Sixth Circuit, for the enforcement of said order. (Record, pp. 1-8.) Under date of May 5, 1942, this cause was submitted to said United States Circuit Court of Appeals for the Sixth Circuit upon said petition filed, upon briefs of counsel for the several parties, upon the record as designated and oral arguments of counsel for the Board and these petitioners.

Under date of June 1, 1942, said United States Circuit Court of Appeals for the Sixth Circuit entered an order finding that the petition for enforcement of the Board's order should, in substance, be granted. (Record p. 583).

Thereafter petitioners filed in said court their petition for rehearing of said cause (Record pp. 585-598), which petition was thereafter denied on October 6, 1942.

II.

THE BASIS FOR THE JURISDICTION OF THIS COURT TO REVIEW THE DECREE IN QUESTION

1. The statutory provision which is believed to sustain the jurisdiction of this court is Judicial Code, Section 240, as last amended by the Act of Congress approved June 7, 1934, C. 426, 48 Stat. 926 (Title 28, Sec. 347(a) U. S. C. A.).

2. The cases believed to sustain the jurisdiction of this court are as follows:

National Labor Relations Board vs. Link-Belt Co., 311 U. S. 584; *National Labor Relations Board vs. Bell Oil & Gas Co.* (5th Circuit) 91 Fed. (2d) 509; *National Labor Relations Board vs. Tex-O-Kan Flour Mill Co.*, 122 Fed. (2d) 433 and *National Labor Relations Board vs. Air Associates, Inc.*, 121 Fed. (2d) 586.

III.

QUESTIONS PRESENTED

The following questions are presented for the consideration of this court:

1. Whether the finding of the Board, affirmed by the United States Circuit Court of Appeals for the Sixth Circuit, that petitioners established a so-called "runaway shop" or branch plant and that Gerity-Adrian Manufacturing Corporation of Adrian, Michigan, is the agent and "alter ego" of The Gerity-Whitaker Company of Toledo, Ohio, is supported by substantial evidence.

2. Whether the finding and order of the Board that the petitioners reemploy Arthur Clark and Roy Keeling and twenty-nine other persons named in Appendix "A" (Record p. 156) is supported by substantial evidence and is a lawful remedy, properly justified by the findings of the Board and the undisputed evidence.

3. Whether upon the findings of the Board and the undisputed evidence, the order of the Board directing reinstatement of thirty-one designated persons was not an unlawful order and that such remedy is without legal authority and justification.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The various findings of fact, conclusions of law and order of the Board, in the particulars herein specified, under "Questions Presented," affirmed by the United States Circuit Court of Appeals for the Sixth Circuit, in its decree of June 1, 1942, are not sustained by substantial evidence, are contrary to law and involve questions of general importance and public interest.

2. The finding and order of the Board and of the United States Circuit Court of Appeals for the Sixth Circuit, with regard to the remedy or penalty invoked in directing reinstatement with back pay to thirty-one designated persons is an unlawful order and its enforcement is in conflict with the principle approved in *National Relations Board vs. Bell Oil & Gas Co.*, 91 Fed. (2d) 509, in that said order and remedy is not a proper application of the Act and of the law to the facts of the case.

Wherefore, your petitioners pray that a writ of *certiorari* issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in case No. 9149 on the Docket of said court, titled: "*National Labor Relations Board, Petitioner, vs. The Gerity-Whitaker Company and Gerity-Adrian Manufacturing Corporation, Respondents,* to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment, order and decree

rendered herein by said United States Circuit Court of Appeals for the Sixth Circuit be reversed by this court, and for such further relief as to this court may seem proper.

MILO J. WARNER,

HALL & DEVLIN,
Counsel for Petitioners.

Dated December 23, 1942.